IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Criminal Appeal No.821 of 2000

1. Sakthivel
2. Nagaraj
3. Prabhu
4. Prakash
5. Aranganathan
6. Mani
7. Manikandan
8. Murthi
9. Muthu
10.Saravanan
11.Murthi
12.Jothi
13.Arul
14.Venkatesan
15.Vijayababu
16.Parthiban
17.Saravanan
18.Chinnakannan
19.Dhayalan
20.Parthipan
21.Guru
22.Ravindiran
23.Raja
24.Pekicemuthu (A) Muthu
25.Ranjith (A) Ranithakumar .. Appellants

-Vs-

State, by Inspector of Police,
Law and Order, Cuddalore N.T.
(Crime No.746 of 1999). .. Respondent

Appeal against the judgment of the learned Additional District Judge cum Chief Judicial Magistrate, Cuddalore, made in S.C.No.41 of 2000 dated 14.3.2000.

!For Appellants : Mr.V.Gopinath, S.C.
For Mr.L.Mahendran and
Mr.C.Christopher for A-1 and A-2

: Mr.R.Sitaraman and
Mr.G.Pugazhenthi for A-5

: Mr.V.Gopinath, S.C.
For Mr.K.A.Ramakrishnan for A-9

: Mr.K.N.Basha for A-3, A-4, A-6
to A-8, A-10 to A-22 and A-24 to A-26.

^For Respondent : Mr.M.K.Subramanian
Govt. Advocate (Crl. Side)

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The appellants, who are A-1 to A-22 and A-24 to A-26, were tried along with A-23, who has not chosen to prefer any appeal, before the learned Additional District Judge cum Chief Judicial Magistrate, Cuddalore, under various charges. The allegation against them is that they formed themselves into an unlawful assembly at about 10.30 p.m. on 2 6.6.99 and that A-1 to A-22 and A-24 to A-26, were each armed with deadly weapons, while A-23 was armed with a stick and that in furtherance of the common object of the said unlawful assembly, A-1, A-2, A-5, A-11 to A-15, A-19 to A-21 inflicted injuries on Kumar (D-1) and that A-3, A-4, A-6 to A-10, A-16 to A-18, A-22, A-24 to A-26 cut Anand (D-2) and as a result of the said cut injuries, the two persons died at Krishna hospital run by P.W.17, a private medical practitioner, at 1.00 and 1.15 a.m. respectively on 27.6.99. The learned trial Judge, while convicting A-1 to A-22 and A-24 to A-26 under Section 148 I.P.C., convicted A-23 under Section 147 I.P.C. and sentenced A-1 to A-22 and A-24 to A-26 to one year rigorous imprisonment each and also directed each one of them to pay a fine of Rs.1,000/- with a default sentence of six months R.I. A-23, on being convicted, was sentenced to seven months simple imprisonment and was also directed to pay a fine of Rs.1,000/- with a default sentence of three months S.I. A-1, A-2, A-5, A-11 to A-15 and A-19 to A-21, on being convicted under Charge No.3 for causing the death of D-1, were sentenced each to imprisonment for life and each one of them was also directed to pay a fine of Rs.5,000/- with a default sentence of one year R.I. and similarly, under Charge No.5, A-3, A-4, A-6 to A-10, A-16 to A-18, A-22, A-24 to A-26, on being convicted for the murder of D-2, were each sentenced to imprisonment for life and each one of them was also directed to pay a fine of Rs.5,000/- with a default sentence of one year R.I. Under Charge No.4, A-3, A-4, A-6 to A-10, A-16 to A-18, A-22, A-23 to A-26 were found guilty for sharing the common object of the accused, who were charged under Charge No.3 for causing the death of D-1 and each one of them was sentenced to imprisonment for life and also to pay a fine of Rs.5,000/- with a default sentence of one year R.I. and

similarly, under Charge No.6, A-1, A-2, A-5, A-11 to A-15, A-19 to A-21 and A-23 were found guilty for sharing the common object of the accused, who were charged under Charge No.5 for causing the murder of D-2 and each one of them under the said Charge was sentenced to imprisonment for life and they were also directed to pay a fine of Rs.5,00 0/- with a default sentence of one year R.I. A-23 was acquitted under Charge Nos.4 and 6. The learned Sessions Judge further directed that if the fine amount is collected from the accused, a sum of Rs.1 lakh will be paid to the legal heirs of each of the deceased 1 and 2 as compensation. A-1 to A-22 and A-24 to A-26 challenge their conviction and sentence in the present appeal.

2. In this judgment, appellants 1 to 22 will be referred to as A-1 to A-22 and appellants 23, 24 and 25 will be referred to as A-24, A-25 and A-26 and A-23, who did not prefer any appeal for his conviction under Section 147 I.P.C., will be referred to as A-23, in the same order as they were arrayed before the learned Sessions Judge for the sake of convenience.

3. The case of the prosecution as could be discerned from the oral and documentary evidence can be briefly summarised as follows:-

P.W.2 is the brother of D-1. A-1 and A-2 are brothers and other accused are their associates. P.W.1 and the deceased as well as the accused were residents of Kattunaicken street of Pudhupalayam. D-1, Kumar, was a distant relative of P.W.1 and D-2, Anand, was a friend of P.W.1. D-1 was eking his livelihood by distributing newspapers and D-2 was making a living by doing sentry work at construction sites. D-1 was the Secretary of Democratic Youth Federation of India during the relevant period and D-2 was a member of the said society. D-1 and D-2 were close friends and they used to participate in all agitations. P.Ws.1 to 3, who were the members of the said Democratic Youth Federation of India, also used to do social service of cleaning streets and removing debris, etc. A-1 and A-2 were selling illicit arrack near Kedilam river. As the woman folks had to attend calls of nature by going to the river bank, the activities of A-1 and A-2 was a hindrance to them. The members of the society, therefore, made a complaint at the police station. The police took action and prevented A-1 and A-2 from selling arrack and therefore, the accused had a grievance against the witnesses and the deceased. About six months prior to the date of incident, Kanagaraj, a member of the Society, was assaulted by A-1, A-2, A-7 and another near the tailor shop of A-1 and in respect of that, a complaint was given at the police station, which was registered under Section 307 I.P.C. The case was pending during the relevant period. In the said complaint, D-1 was figuring as a witness. On account of this, A-1 and A-2 could not sell arrack and four days prior to the date of incident, A-1 and A-2 sold arrack through one Rajathi, but D-1 intervened by giving a complaint to the Superintendent, Cuddalore, leading to the arrest of Rajathi. Therefore, the accused grew angry with D-1 and D-2, since when D-1 went to give a complaint to the Superintendent, he was accompanied by D-2, P.W.1 and one Ganesan. They threatened D-1 and D-2 as well as the witnesses that they will not leave them alive. This is said to be the motive for the occurrence, which took place at about 10.30 p.m. on 26.6.99.

4. At about 10.30 p.m. on 26.6.99, P.W.1, on coming to know that the house of P.W.4 is being damaged by A-1 to A-10, rushed to the place along with P.Ws.2 and 3. There, he found A-1 to A-10 armed with iron pipes and veecharuvals damaging the house of P.W.4. On seeing this, the residents of the street ran away from the place. P.Ws.1 to 3 returned to their house and while they were so returning, they saw D-1 and D-2 in front of the house of P.W.5. A-1 and A-2 and their henchmen, who were armed with veecharuvals, iron pipes and other weapons, rushed towards them and A-1, seeing D-1, told him that he will not be allowed to live peacefully and cut him with a veecharuval on the right side of his head. A-2, with a veecharuval, cut D-1 on the left side of his head. A-5 cut D-1 on the fore head and A-13 cut D-1 on the right side of his head. A-14 cut D-1 on the back of his head and A-11 beat D-1 with an iron pipe on the right shoulder. A-12 beat D-1 on the right fore arm with an iron pipe and A-19, who had an iron pipe in his hand, beat D-1 on the right leg. A-20, with a veecharuval in his hand, pecked at the left shoulder of D-1. A-16 pecked at D-1 on the right side of his buttocks. A-21 cut D-1 on the right hand and when D-2 intervened, A-3 cut him on the left side of his head with a veecharuval, followed by A-4, who cut him on the right side of his head. A-25 cut him on the chin and A-8 cut him on the right side of his hand. A-10 cut D-2 on the right hand and A-16 followed by beating D-2 with an iron pipe on the right shoulder. A-22 cut D-2 on the right hand and A-17, with a veecharuval, cut D-2 on the right fore arm. A-24 cut D-2 on the right fore arm and A-6 cut him on the left hand. A-7 and A-9 inflicted a cut injury on the fingers of his left hand. A-26 cut D-2 on the left flank, while A-18 cut him on the right side of his chest. A-23, with a stick, was all the time standing by that side. This was at 10.45 p.m. The occurrence was witnessed by P.Ws.1 and 2 and there were electric lights burning at the place. On hearing the alarm, the villagers also gathered. The accused ran away from the place leaving the two injured persons. P.Ws.1 to 3 removed D-1 and D-2 and produced them before P.W.17, a private medical practitioner, who was running a hospital under the name and style of Krishna Hospital, at 11.30 p.m. P.W.17 examined D-1 and found on his person the following injuries:-

1. A lacerated fresh injury cutting the parietal bone exposing brain 8 cm. x 3 cm. x 2 cm. on the rt. side of the head.
2. A fresh lacerated injury 6 x 1.5 x 1 cm. over rt. side of forehead.
3. A lacerated fresh injury 3 x 1 x 1 cm. over the lt. parietal region.
4. An incised wound 5 x 2 x skull deep on the lt. side of occipital region.
5. A lacerated injury 2 x 1 x 1 cm. close to injury No.(4).
6. An incised wound 3 x 2 x 1 cm. on the rt. elbow.

Ex.P.18 is the copy of the accident register issued by the said doctor for the injuries found on D-1. He also examined D-2 and for the injuries found on his person, he issued Ex.P.19, the copy of the accident register and the injuries found on D-2 are as follows:-

1. An incised fresh injury 6 x 1.5 x 1 cm. on the right side of the scalp. Bleeding through right ear and mouth.
2. An incised fresh wound 2 x 1 x 1 cm. on the chin.
3. An incised fresh injury 3 x 1 x 1 cm. on the right arm.
4. An incised fresh injury 7 x 2 x 1 cm. on the left neck.

5. An incised fresh wound 2 x 1 x 1 cm. on the right elbow.
6. A lacerated fresh injury 2 x 1 cm. x 1 cm. on the right arm.
7. An incised wound 2 x 1 x 0.5 cm. on the right gluteal region.
8. an incised wound 3 x 1 x 1 cm. on the dorsum of the hand above the index finger.
9. An uncontinuous incised wound 5 x 1 x 1 cm. on the dorsum of the right hand.
10.Multiple small incised wounds right hand.

5. In the meantime, HC 471 of Cuddalore N.T. Police station contacted P.W.20, who was engaged in vehicle check-up, at about 10.45 p.m. and informed about the rioting, which had taken place at Pudhupalayam. On the oral information furnished by the said head constable, P.W.20 proceeded to the scene village accompanied by a Sub-Inspector and other police officers. On reaching the scene village, he could not get any information about the rioting, but he received an information that the injured persons have been removed to Krishna hospital. P.W.20 proceeded to Krishna hospital, where finding D-1 and D-2 in an unconscious stage and not able to get any information from the persons, who were present at the hospital, left the hospital and reached the police station at about 12.30 p.m. P.W.1 appeared before him with a written complaint and handed over the same to him. On the basis of the written complaint handed over by P.W.1, P.W.20 registered a case in Crime No.446 of 1999 against A-1 to A-10 under Sections 147, 148, 32 4, 326 and 307 I.P.C. by preparing express reports. A copy of the printed first information report is Ex.P.29 in the case. Thereafter, he proceeded to Krishna hospital and on reaching the hospital, he was informed that both D-1 and D-2 have died. P.W.20 returned to the police station with the death intimations and altered the crime to one under Section 302 I.P.C. Ex.P.30 is the express report in the altered crime. He took up investigation in the crime and reached the scene of occurrence at 3.00 a.m., where an observation mahazar, Ex.P.2, was prepared. He also seized blood stained earth and sample earth, M. Os.6 and 7, under a mahazar, Ex.P.3. At about 4.30 a.m., in front of the house of A-1, the blood stained earth and the sample earth, M.Os.8 and 9, were seized under a cover of mahazar, Ex.P.4. The mahazars were attested by witnesses. He also drew a rough sketch, Ex.P.31. He left the scene of occurrence and reached Krishna hospital, where the inquest over the body of D-1 was conducted between 6.00 a.m. and 8.00 a.m., during which P.Ws.1 to 3 were questioned and their statements were recorded. Ex.P.32 is the inquest report. The inquest over the body of D-2 was conducted thereafter and the same witnesses were examined during the inquest of D-2 also. Ex.P.33 is the inquest report prepared by the officer in respect of D-2. After the inquest, requisitions, Exs.P.24 and P.25 were issued to the medical officer and the two dead bodies were despatched with his requisitions.

6. On receipt of the requisitions, P.W.18, the Assistant Surgeon attached to Government Hospital, Cuddalore, conducted autopsy on the body of D-1 and found the following injuries:-

1. A lacerated cut injury right forehead with size 7 cm. x 2 cm. x 2 cm. exposing bone.
2. A deep cut injury exposing fractured bone and brain over right frontal

area with size 10 cm. x 3 cm. x 2 cm.
3. A bone deep cut injury over left frontal area with size 5 x 2 x 2 cm.
4. A bone deep cut injury over frontal left area behind the wound item 3 with size 5 x 2 x 2 cm.
5. A bone deep cut injury over centre of occipital area, with size 10 x 3 x 2 cm.
6. A linear contusion mark with3 cm. long size over right shoulder.
7. A lacerated cut wound 1 x 1 x 1 cm. size over left scapula.
8. Two lacerated wounds with size 1 x 1 x 1 cm. each found side by side over right buttocks.
9. A lacerated cut injury with size 3 x 1 x 1 cm. exposing the bone over the lateral aspect of right elbow.
10. A lacerated wound 1 x 1 x 1 cm. size right upper arm.
11. A lacerated wound right leg with 2 x 1 x 1 cm. size.

The doctor issued Ex.P.27, the post-mortem certificate, with his opinion that the deceased died on account of shock due to head injuries about 8 to 12 hours prior to autopsy. Similarly, the dead body of D-2 was subjected to autopsy by the said doctor and on his person, the doctor found the following injuries, which he noted in Ex.P.26, the post-mortem certificate:-

1. An incised cut wound exposing the bone about 6 cm. x 2 cm. x 2 cm. size over right frontal area.
2. A 2 x 2 x 1 cm. size cut wound over left frontal region.
3. A cut wound with 2 x 2 x 1 cm. size on centre of chin.
4. A cut wound with 3 x 3 x 2 cm. size on middle of the right arm.
5. An incised cut wound with size 3 x 3 x 3 cm. on right elbow.
6. A linear contusion about 10 cm. length right shoulder.
7. A cut wound right hand dorsum.
8. A deep cut injury over left forearm with size 8 x 4 x 2 cm.
9. A cut injury with 2 x 1 x 1 size near the wound No.8.
10. A cut injury over left dorsum of hand with size 3 x 1 x 1 cm.
11. A cut injury with 2 x 2 x 1 cm. size over left middle finger exposing fractured bone.
12. A cut injury about 2 x 3 x 1 cm. size over right side of hip.
13. A cut injury about 2 x 3 x 1 cm. over right chest.

The doctor has opined that the deceased died on account of shock due to head injuries about 8 to 12 hours prior to autopsy.

7. In the meantime, P.W.20, continuing with his investigation, questioned witnesses and recorded their statements. The blood stained clothes of the deceased produced by the police constable, who took the dead bodies to the hospital, were also seized. The scene of occurrence was caused to be photographed through the photographer, P.W.12 at 1.00 p.m. on 27.6.99. He questioned P.Ws.1 to 3 and recorded their statements. On 27.6.99, he formed a special party to trace the accused and arrest them. On 28.6.99, P.Ws.5 to 8 and others were questioned and their statements were recorded. On 29.6.99, he questioned the photographer, P.W.12 and other witnesses and also searched for the accused. On an information received at noon on 30.6.99, he left with his party to Devanampattinam and arrested A-7,

A-11, A-12 and A-13 in the presence of P.W.13 and another. A-7 produced an aruval, M.O.19, which was seized under a mahazar, Ex.P.11. On 1.7.99, A-2, A-6 and A-8 were arrested. In pursuance of the admissible portion of the statement, Ex.P.5, given by A-2, the police party was taken to Cuddalore-Chidambaram road and from underneath a bridge, an aruval, M.O.10, was produced, which was seized under a cover of mahazar, Ex.P.6. The same was attested by P.W.9 and another. A-3 was arrested at noon on 3 .7.99 and he gave a statement. The admissible portion of the said statement is Ex.P.12. In pursuance of the admissible portion, Ex.P.12, M.O.16, an aruval, was seized under a cover of mahazar, Ex.P.13, attested by P.W.14. On 5.7.99, A-5, A-10 and A-15 were arrested and in pursuance of the admissible portion, Ex.P.7, given by A-5, the two aruvals, M.Os.11 and 12, were seized under a cover of mahazar, Ex.P.8, attested by P.W.9. The accused were sent to Court for remand. A-1 and A-18 were arrested at about noon on 7.7.99. A-1 gave a statement and the admissible portion of the said statement is Ex.P.14. He took the police party to his house, where he produced M.O.17, which was seized under a cover of mahazar, Ex.P.15, attested by P.W.15. A-1 gave a complaint stating that his house was damaged by the villagers. The said complaint of A-1 was registered as a crime in Crime No.467 of 1999 and investigation was taken up in the said crime also. He continued with his investigation and recorded the further statements of P.Ws.1 to 4. On 2.7.99, A-9 surrendered before Judicial Magistrate No.1, Villupuram and on 9.7.99, he was taken into police custody on the orders of the Court. He was brought to the police station and questioned at about 6.30 p.m. The accused gave a statement and in pursuance of the admissible portion, Ex.P.16, given by him, the police party was taken to a burial ground, where he produced M.O.18, which was seized under a cover of mahazar, Ex.P.17. Later, he was sent to Court for remand. A-4 was arrested at about 2.30 p.m. on 14.7.99, when he was standing under suspicious circumstances near a check post. He was questioned and in pursuance of the admissible portion, Ex.P.9, given by him, the police party was taken to his house at Arumugampillai street, where, M.O.20, the veecharuval, was produced. The same was seized under a cover of mahazar, Ex.P.10. He conducted investigation in connection with Crime No.467 of 1999, which was registered on the basis of the complaint given by A-1, by preparing observation mahazar and drawing a rough sketch. He questioned other witnesses on 8.7.99, 9.7.99 and on 16.7.99. On 23.7.99, A-1 was detained under preventive detention under Act 14 of 1982 in terms of the provisions of the said Act. He questioned witnesses and recorded their statements and further investigation was taken up by P.W.21, who arrested A-14, A-16 and A-17 on 5.8.99. On 8.8.99, A-14 was arrested by him. He also questioned the doctor, P.W.17 and recorded his statement. 30.1.2000. After the completion of investigation, the final report was filed against the accused on 3.9.99.

8. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side.

9. P.W.18, the doctor, who conducted autopsy, was examined to establish the cause of death of D-1 and D-2. It was he, who conducted the autopsies on the two dead bodies of Kumar and Anand, namely, D-1 and D-2 and issued the two post-mortem certificates, Exs.P.27 and P.26 respectively, with

the opinion that they died on account of shock due to head injuries. In the evidence, he has stated that external injuries 1 to 4 found on D-1 with their corresponding internal injuries are cumulatively and independently fatal in nature. He has also stated that external injuries 1 and 2 found on D-2 with their corresponding internal injuries are fatal in nature and that the injuries found on D-1 and D-2 could have been caused in the manner alleged by the prosecution. We, therefore, hold that the prosecution has succeeded in establishing the cause of death of D-1 and D-1 and it was on account of homicidal violence.

10. The prosecution examined seven witnesses to prove that A-1 to A-26 inflicted the injuries on the two persons and they were examined as P.Ws.1 to 3 and 5 to 8. Though P.Ws.1 to 3 have supported the prosecution version, P.Ws.5 to 8 have turned hostile. We, therefore, have to consider only the evidence of P.Ws.1 to 3 and the other materials to find out whether the prosecution has succeeded in establishing the charges against the accused.

11. We will first take up the case of A-11 to A-26. The names of A-11 to A-26 were not mentioned by P.W.1, when he gave the complaint, Ex.P.1, to P.W.20, the investigating officer, as the persons, who participated along with A-1 to A-10. Their names are not only not found in Ex.P.1, the earliest document to come into existence in this case, but P.W.1, in his earlier statement recorded under Section 161 Cr.P.C. by P.W.20 during the inquest, also did not mention their names as the persons, who were present along with A-1 to A-10. P.Ws.2 and 3, though, according to the prosecution, were examined at the time of inquest along with P.W.1, also did not mention their names as the assailants of the two persons. Therefore, it becomes clear that P.W.1 neither in his complaint, Ex.P.1, nor in his statement recorded under Section 161 Cr.P.C. and P.Ws.2 and 3, in their earlier statements given to P.W.20 mentioned the names of A-11 to A-26. The case of the prosecution is that the three witnesses, P.Ws.1 to 3, gave the names of A-11 to A-26 when their further statements were recorded on 7.7.99. The further statements of P.Ws.1 to 3, which the prosecution claims to have recorded on 7.7.99, were sent to Court only on 5.8.99, as could be seen from the seal affixed by the Court on those statements. When cross-examined as to why P.Ws.1 to 3 did not initially mention the names of A-11 to A-26 as the assailants, they came out with a strange and unacceptable answer by coming out with a version that since they were in an agitated and depressed mood, they did not give the names of A-11 to A-26. We are unable to accept that P.Ws.1 to 3 were in an agitated and depressed mood, since P.W.1 admittedly mentioned ten names in the complaint, Ex.P.1 and had given other details. P. Ws.2 and 3 also gave the names of ten persons and even if it is to be assumed that the three witnesses were in an agitated and depressed mood at the time of inquest, then nothing prevented the witnesses from going to the police station to give a further statement immediately thereafter. They did not do so and it was the investigating officer, P.W.20, who examined them on 7.7.99 and recorded their further statements, wherein the names of A-11 to A-26 appear for the first time in the case. P.W.20, in cross-examination, stated that he had to examine P.Ws.1 to 3, since his confidential investigation revealed that A-11 to A-26 also participated in the occurrence. He did not say as to when he received the confidential information as regards the part played by A-11 to A-26. The

fact remains that though P.W.20 visited the scene of occurrence several times and had to examine several witnesses, he did not choose to examine P.Ws.1 to 3 till 7.7.99 and the prosecution had no explanation to offer as to why he had taken so much time to examine them for the purpose of recording their further statements, which were received by the Magistrate only on 5.8.99.

12. At this juncture, we have to refer to the two post-mortem certificates, Exs.P.27 and P.26 issued by P.W.18 in respect of D-1 and D-2 respectively. On D-1, the doctor found 11 injuries and on D-2, the doctor found 13 injuries. In the complaint, Ex.P.1, A-1, A-2 and A-5 each were given an overt act of attacking D-1 and A-3, A-4, A-6, A-7, A-8, A-9 and A-10 were each given an overt act of attacking D-2. In evidence, P.Ws.1 to 3 have stated that D1 was attacked by A-1, A-2, A-5, A-11, A-12, A-13, A-14, A-15, A-19, A-20 and A-21 and that D-2 was attacked by A-3, A-4, A-6, A-7, A-8, A-9, A-10, A-16, A-17, A-1 8, A-22, A-24, A-25 and A-26. This means that 11 accused were alleged to have attacked D-1 and 14 accused were alleged to have attacked D-2. The post-mortem certificates dated 27.6.99 show that on D-1, 11 injuries were noted by the doctor and on D-2, 13 injuries were noted. It becomes, therefore, clear that for the 11 injuries noted on D-1, each of the 11 accused were apportioned with overt act and for the 13 injuries noted on D-2, 14 accused have been implicated, after each one of them was apportioned with an overt act and the prosecution has stated that A-7 and A-9, while attacking D-2, have cut the middle finger and the two cuts inflicted by the two accused caused only one injury. The present evidence and the injuries found on D-1 and D-2 and the number of accused implicated with overt acts, therefore, show that each accused was apportioned with an overt act and in spite of such apportionment of the injuries to the accused, the prosecution could not give any overt act to A-23 and therefore, left him out by only alleging that he was one of the members of the unlawful assembly and was armed with a stick. The evidence on record, therefore, indicates that the prosecution witnesses had come out with versions at a later point of time implicating several accused and we, therefore, reject the prosecution version as regards A-11 to A-26 and acquit them of all the charges under which they were convicted.

13. We have already found that P.Ws.1 to 3 had no qualms or compunction in coming out with false evidence implicating even innocent persons in a grave offence of murder and therefore, their evidence is suspect and has to be scrutinised more carefully. A careful perusal of the evidence of P.Ws.1 to 3 has not infused any confidence in the mind of this Court and the complaint, Ex.P.1, could not have come into existence in the manner alleged by the prosecution. According to P. W.1, he left the scene of occurrence taking with him the two injured persons to Krishna hospital, where they were produced before P.W.17 at 11.30 p.m. He has admitted in cross-examination that he was at the hospital till midnight and did not see P.W.20, the investigating officer, at the hospital. P.W.2 has also admitted in cross-examination that he accompanied P.W.1 to the hospital and was there till 1.15 a.m. on the night of 26/27.6.99 and that no police officer came to the hospital. Similarly, P.W.3 has admitted that he was at the hospital till the doctor pronounced D-1 and D-2 dead and that he did not give any statement to any police officer. The evidence of P.Ws.1 to 3, therefore, show that

P.W.1 was at the hospital till midnight, P.Ws.2 and 3 till 1.15 a.m. and they did not see P.W.20 at the hospital. In this background, we have to consider the evidence of P.W.20, the investigating officer. According to P.W.20, while he was checking the vehicles between 8.00 p.m. and 10.00 p.m. in front of Cuddalore N.T. Police station, HC 471 contacted him at 10.45 p.m. and informed him that a rioting had taken place in the village Pudhupalayam. According to P.W.20, on receiving the said information from the head constable, he left for the scene of occurrence taking with him a Sub-Inspector and some police officers to the scene village and also visited the place where the rioting was alleged to have taken pl ace. He has further stated in the chief-examination that no one has informed him that a rioting took place in the village, but was informed that two persons, who suffered injuries, have been removed to Krishna hospital and therefore, he went to Krishna hospital. He has further stated that on reaching Krishna hospital, he found D-1 and D-2 in an unconscious stage and since no one were present at the hospital, who were able to give any information regarding the incident, he left the hospital for police station. If the evidence of P.W.20 is to be accepted, then it means that if P.Ws.1 to 3 were at the hospital when the police officer visited, they did not give any information regarding the incident as they could not have known anything about the occurrence. If P.Ws.1 to 3 were really eye witnesses, then there was no reason for either of the witnesses to refrain from giving a complaint to the police officer, who appeared at the hospital. The fact that no complaint was given to the police officer also shows that P.Ws.1 to 3 could not have been present at the hospital when the investigating officer alleged to have visited it and if they were present, they had no knowledge as to the details of the occurrence.

14. In the above background, we cannot but refer to the two documents, Exs.P.18 and P.19, the copies of the accident register issued for D-1 and D-2 by the doctor, P.W.17. In the two documents, Exs.P.18 and P.19, it is found mentioned that the two injured persons were produced before him by one Rajendiran and that P.W.2 has admitted in cross-examination that Rajendiran is the brother of D-2. This shows that the two injured persons were produced before P.W.17 by Rajendiran, the brother of D-2 and the present evidence of P.Ws.1 to 3 that they removed the two injured to the hospital cannot be true, more so, when looked at in the background of the evidence of P.W.20 that the persons, who were present at the hospital, did not give him any useful information regarding the incident, when he visited it. We, therefore, find it difficult to accept the evidence of P.Ws.1 to 3.

15. Though the prosecution claimed that the occurrence took place when D-1 and D-2 went to the house of P.W.4 on getting an information that his house is being damaged, the investigating officer has admitted in cross-examination that he did not even care to visit the house of P.W.4 and seize any broken tiles indicating that there was damage to the house of P.W.4. The origin of the case itself is, therefore, doubtful, since the prosecution has not succeeded in establishing that the house of P.W.4 was damaged on that day and that when D-1 and D-2 went there, they were attacked by the appellants/accused. It is to be remembered at this stage that the prosecution did not even mark the complaint given by A-1, though it was registered as a crime in Crime No.467 of 1999 nor did it mark the referred report in the said

crime. The prosecution at every stage has not only faulted, but also did not have a consistent version and the witnesses on their own showing are the witnesses, who cannot be believed to find the accused guilty. We, therefore, acquit A-1 to A-10 also. The benefit of this judgment will also accrue to A-23, who has not chosen to prefer an appeal.

16. In the result, the appeal is allowed. The conviction and sentence imposed upon the appellants/accused, who are A-1 to A-22 and A-24 to A-26, and upon A-23, who has not preferred any appeal, by the learned Additional District Judge cum Chief Judicial Magistrate, Cuddalore, in S.C.No.41 of 2000, are set aside and they are acquitted. It is reported that A-1 to A-6 and A-8 are in jail. If so, they are directed to be released forthwith, unless they are required in connection with any other case. The bail bonds, if any executed by the other accused, shall stand cancelled. The fine amount, if paid by the accused, will be refunded to them.

Index: Yes
Website: Yes
sra

To

1.The Additional District Judge cum Chief Judicial Magistrate, Cuddalore.

2.-do- Thro' The Principal Sessions Judge, Cuddalore.

3.The Judicial Magistrate No.II, Cuddalore.

4.-do- Thro' The Chief Judicial Magistrate, Cuddalore.

5.The District Collector, Cuddalore.

6.The Director General of Police, Chennai.

7.The Superintendent, Central Prison, Cuddalore.

8.The Inspector of Police, Law and Order, Cuddalore N.T.

9.The Public Prosecutor, High Court, Madras.

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